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RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—LIFE TENANT UNDER VOID DEVISE HOLDING AGAINST REMAINDERMAN.—Testatrix was seised in fee of certain tenements, which by a void will she devised to her husband for life with remainder over. The husband entered claiming under the will and held for the statutory period. Upon his death the remainderman claimed possession under the will on the ground that as the husband also claimed under the will he was estopped from setting up its invalidity. *Held*, title in fee accrued to the husband and his heirs by adverse possession; for the will being void the husband was not estopped from denying the title of the remainderman. *In re Coole*, [1920] 2 Ch. 536.

The English cases have definitely established that a life tenant under a void will, who claims under the will for the statutory period gets title by adverse possession; and is not stopped from denying the title of the remainderman. *Paine v. Jones*, (1874), L. R., 18 Eq. 320; *In re Coole*, *supra*. On the other hand where the testator's title is defective, but whatever interest he does have is conveyed by a valid instrument and thereafter the possession of the life tenant perfects the devisor's title, the benefit of that possession will enure to those claiming in remainder, for the life tenant is estopped from denying the title of the devisor. *Board v. Board*, (1873), L. R. 9 Q. B., 48; *In re Anderson*, [1905] 2 Ch. 70. The distinction is that in the latter case the life tenant acquires possession by force of the devise; and having accepted a benefit thereunder will not be allowed to say that the common testator did not have the title, which in fact was outstanding in another. See 28 YALE LAW JOURNAL 219. There are some American courts which do not follow this distinction. In *Hanson v. Johnson*, (1884), 62 Md. 25, the court held that a tenant for life claiming under a void will was estopped from denying the title of the remainderman. This however was unnecessary to the decision of the case. To the same effect is *Anderson v. Rhodus*, (1860, S. C.), 12 Rich. Eq. 104, where the court says that the possession of the life tenant was not hostile to the remainderman; but was in assertion and support of their common title. The trouble with this is that there is no common title when the devise is invalid. Neither the life tenant nor the remainderman receive any title under the will. Whatever title the life tenant gets he acquires by his own wrongful act. His possession is analogous to that of a donee under a void gift who can, by holding for the statutory period, acquire a title good against the donor and all others claiming through him. Why therefore should the life tenant be estopped from denying the title of one who is not in privity with the life tenant's source of title. If however the will is valid then there is a common source of title. The life tenant does not then hold adversely to the devisor; and if his possession perfects the defective title of the testator the benefit should enure to those in remainder. It is submitted that the American decisions are not sound in principle and that the better doctrine is that applied by the English courts.